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Item 7 of the provisional agenda

HUMAN RIGHTS OF INDIGENOUS PEOPLES

Written statement submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 July 1998]

GE.98-13204 (E)

1. Indigenous peoples must be able to enjoy all the human rights in force. This is the principle behind the statements made in the various United Nations committees entrusted with the task of monitoring the implementation of human rights agreements.

2. However, the Amerindian peoples of North, Central and South America are still being subjected to discriminatory treatment.

3. In most of the States of Central and South America, discrimination is direct, but sometimes, as in Chiapas, it is accompanied by violent repression. Attempts are being made to eliminate physically active militants and representatives of the Amerindian peoples (for example, E. Morales in Bolivia). Their rights to national identity, development, access to education and to health care are flouted. The Amerindians are in exile in their own territory.

4. In North America, and particularly in the United States, direct elimination is sometimes used (as in the case of the leader, Leonard Peltier, imprisoned for nearly 20 years and in danger of dying in prison for lack of adequate care). More often it is a matter of organizing the corruption of the Amerindian communities, as through the sharing by certain tribes in the profits of casinos and gambling saloons in California. Most of the tribes in the United States have record levels of poverty, alcoholism and suicide. Linguistic assimilation has encouraged the virtual extinction of numerous Amerindian languages in the American-style "super-democracy".

5. In these circumstances, the draft declaration on the rights of indigenous peoples must quickly become a new instrument for the protection of human rights, despite the constant delays on the part of some Powers in North and South America.

6. This declaration must ultimately be adopted, despite its imperfections. It has the merit of recalling that indigenous peoples have the right to self-determination and of enshrining the right of indigenous peoples to maintain the "distinctive and profound relationship" established with nature and with their land in particular. It is thus envisaged that limits must be placed on the claims of transnational companies to Amerindian land, in violation of the treaties concluded, for the purpose of extracting underground resources (oil, water, etc.) and undertaking speculative operations.

7. The Sub-Commission on Prevention of Discrimination and Protection of Minorities must commit itself to supporting the pan-Amerindian coordination efforts that are needed for a real Amerindian renaissance; it must call for the speedy adoption of the draft declaration on the rights of indigenous peoples.

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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED: REVIEW OF DEVELOPMENTS CONCERNING RECOMMENDATIONS AND DECISIONS RELATING, INTER ALIA, TO: ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS

Written statement submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 July 1998]

1. The United Nations and the specialized agencies are endeavouring to secure acceptance of the various human rights instruments by States. However, the major Powers which control the Security Council and which, in some circumstances, impose their decisions and their authority ostensibly in order to ensure respect for international law and human rights are not always entitled to exercise that function. For example, the United States, quite apart from being significantly in arrears of payment of its financial contribution to the United Nations and having deserted UNESCO, is also one of the States that have ratified a very small number of international conventions relating to human rights.

2. The United States, while considering itself to be above common international law, is nevertheless endeavouring to impose American legislation (such as the Helms-Burton and d'Amato Acts) on the rest of the world.

3. The Sub-Commission on Prevention of Discrimination and Protection of Minorities should call to order States, such as the United States, which are showing indifference, not to say contempt, for human rights instruments and should urge them to ratify those various conventions.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE QUESTION OF TRANSNATIONAL CORPORATIONS

Written statement by the Indian Movement "Tupac Amaru" and the Indigenous World Association, which are non-governmental organizations in consultative status

The Secretary-General has received the following written statement, which is distributed pursuant to Economic and Social Council resolution 1996/31.

[22 June 1998]

Written statement by the Indian Movement "Tupac Amaru" and the Indigenous World Association, which are non-governmental organizations in consultative status

CODE OF CONDUCT FOR TRANSNATIONAL CORPORATIONS

1. The concept of a "code of conduct" appears to have originated in the world of business as a way of regulating commercial disputes, and is closely linked to the shifts between the old and new international economic orders.

2. A response is now needed to the challenges posed by the inexorable advance of globalization worldwide, the deregulation of the international financial system, the penetration of transnational corporations in all spheres of the world economy leading to the irrational exploitation of natural resources, the privatization of core enterprises and extreme poverty ensuing from the implementation of the structural adjustment programmes of the International Monetary Fund (IMF) and the World Bank.

3. In the context of the new international economic order, the transnational movement, as the concrete manifestation of the blind, anarchic forces of the market economy, constitutes the greatest obstacle to the effective exercise of the inherent economic, social and cultural rights of all peoples, and to the enjoyment of their basic natural resources as provided in international instruments.

4. In the face of the law of free competition - the driving force behind globalization, which sweeps away all obstacles to the unbridled determination to colonize the world, hastens the dismantling of mechanisms and rules of conduct and obstructs the economic function of the State - societies from North to South have succumbed in a world without borders, without laws and without ethical standards. After the relentless advance of the globalization of capital, the absence is being felt now more than ever before of an international legal framework that is capable of regulating the manifold activities of transnationals and their direct investments throughout the world.

5. A number of factors make the elaboration of a code of conduct for transnational corporations a matter of urgency. First, the invisible hand of powerful monopolies and holdings, which are in constant quest of profit and which, by their nature, behave irrationally and blindly, that is, without morals and outside the jurisdiction of host countries. Their prime objective consists in generating maximum profit and gain by plundering natural resources and exploiting labour.

6. Second, the demands of poor countries for the right to just and equitable development have confirmed that how impossible it is to bring such supranational activities under the control of a host country's national legislation. The host States have gradually lost their bargaining power and can no longer exercise legal jurisdiction over foreign subsidiaries operating in their territories, because their legislations often contain no reference to the term or concept of "corporate nationality", or to rules of conduct or any definition of the legal status of transnational corporations.

7. It is essential therefore firstly that the matter of the nationality of transnational corporations should be defined and secondly that clear, specific rules should be drawn up regarding the responsibility of economic entities which are subject to international law for the mutilating of mother earth, the pollution of the environment, and for exclusion and extreme poverty, all acts that are considered to be serious violations of human rights. In this sense, one way of filling the existing gaping legal vacuum in regard to transnational corporations would be to harmonize the legislation of developing countries.

8. An unprecedented legal gap has been left in countries of the former socialist camp as a result of the transition from the socialist planned economy to the market economy, from State ownership to private ownership, and from the socialist work ethic to capitalist competition. As matters stand at present, the activities and investments of oil corporations and trusts are not subject to any regulation, and there are no provisions regarding indigenous rights to land tenure and use of natural resources.

9. Since the domestic legislation of host countries neither specifies the legal status nor clearly defines the rights and duties of the supranational enterprises they are in effect neither national nor stateless, but operate through vertical links with their parent companies which effectively means that they are subject to the jurisdiction of decision-making centres located in the industrialized nations.

10. The fact that the jurisdiction of States on whose territories parent mother companies operate is unilaterally extended to their subsidiaries located in all parts of the world constitutes interference in the internal affairs of other countries. For example, under the Torricelli Amendment and the Helms-Burton Act, both of which are extraterritorial in nature, the United States Government has sought to reinforce its economic and commercial siege by prohibiting American branches and subsidiaries located in third countries from engaging in trade with Cuba.

11. Since 1989, the Working Group on Indigenous Populations, aware of the negative effects of transnational corporations and in the context of its standard-setting activities, has been urging the United Nations Centre on Transnational Corporations to assist it in "preparing a database on transnational investments and operations on indigenous peoples' lands, and in particular those lands which are currently in dispute". (E/CN.4/Sub.2/1989/36, annex I). There is no doubt that although the international community has been trying since the 1970s to draw up codes of conduct to regulate the activities of entities and enterprises in particular areas of the international economy and trade, they have produced no tangible results.

12. Pursuant to Economic and Social Council resolution 1913 (LVII) of 5 December 1974, the original idea of drawing up a code began to take form with the establishment of the Committee for Transnational Enterprises, although the Committee's mandate was not specified. The Committee held its first session in March 1974, when it decided to devote priority attention to drawing up a set of standards, which would constitute a legally binding code of conduct for transnational corporations.

13. During the Committee's third session, as might have been expected, a dispute arose between industrialized and third world countries regarding the nature and legal status of the future code. The former proposed a solemn declaration of principles in the form of recommendations, while the latter wished to give the code normative status, that is, to make it an international instrument that was legally binding on both transnational corporations and States.

14. Despite protracted heated negotiations, the government delegations were unable to reach a consensus on the nature and legal status of the future code of conduct and, in 1992, at the request of the United States of America, they agreed to drop discussion of one of the most burning issues of "industrial civilization". That senseless decision countervened the basic principles embodied in international instruments and United Nations resolutions, which urge the prompt establishment of an international legal framework for economic relations. In this connection, mention should be made of General Assembly resolutions 1803 (XVII) of 1962 entitled "Permanent Sovereignty over Natural Resources" and 3281 (XXIX) of 1974 entitled "Charter of Economic Rights and Duties of States".

15. Contrary to the provisions of these resolutions, the draft code of conduct was dropped in response to pressures exerted by economic and financial circles and more particularly as a result of the guidelines issued to Governments by the World Bank and the IMF in respect of the treatment of foreign investment, and other political and diplomatic manoeuvres employed in negotiations.

16. The Earth Summit which took place in Rio de Janeiro, Brazil, in 1992 witnessed an unprecedented offensive by the business world, in the form of conglomerates and international holdings, against anything that stood in the way of the neocolonization of the Amazon region and the exploitation of developing countries' natural resources and wealth.

17. Numerous transnational corporations mobilized to set up ephemeral NGOs on the occasion of the Summit, such as the "Global Climate Council" composed of over 40 predominantly American corporations. This organization, representing potential interests, appeared at the Rio Conference in the guise of an NGO for the obvious purpose of bringing pressure to bear on Government decisions, with the initial effect of liquidating the United Nations Centre for Transnational Enterprises. The reason was perfectly clear. In keeping with its brief, the Centre was working on a draft code of conduct, with a view to regulating the murky and illegal activities of transnationals. The industrialists' lawyers were aware that, if such a code were to be adopted, it would undoubtedly prove an obstacle to the application of the neoliberal economic doctrine, which has facilitated the inexorable advance of economic globalization, the concentration of capital and the deregulation of the international financial system, with their irreparable impact on developing countries.

18. Meanwhile, the international community, particularly environmental organizations and indigenous peoples committed to defending the Earth, to protecting the environment and to the rational use of resources, were left confused and powerless in the face of the triumph of the neoliberal and free trade policies as absolute values of the market economy.

19. In conformity with General Assembly resolution 47/212B, of 6 May 1993, on the restructuring of the United Nations, it was decided to do away with the United Nations Centre on Transnational Corporations and to replace it simply with a Division on Transnational Corporations and Investments, which under a different name is currently part of the Geneva-based UNCTAD. Its function is now limited to gathering and publishing statistical data on the flows of direct foreign investment in the world.

20. In June 1994, the Centre on Transnational Corporations submitted its fourth and final report to the Working Group on Indigenous Populations in compliance with the Sub-Commission's resolutions 1989/35 of 1 September 1989, 1990/26 of 31 August 1990, 1991/31 of 29 August 1991 and 1992/33 of 27 August 1992. The indigenous peoples of the world, who are the first victims of the negative effects of transnational capital, lamented the lack of political will on the part of States and urged the United Nations to restore the Centre on Transnational Corporations.

21. For the above reasons, and in the light of the legitimate concerns of the nations which are gradually succumbing to the dictatorship of transnational capital, the non-governmental organizations signing this declaration called on the Sub-Commission to adopt appropriate recommendations, addressed to the United Nations bodies and to the international community, for the urgent establishment of a working group or the restoration of the Centre on Transnational Corporations, with the following responsibilities:

(a) To identify the globally negative effects of transnational corporations on the enjoyment of economic, social and cultural rights;

(b) To investigate the illegal transfer of capital from poor countries to rich countries, and fraudulent and speculative operations on the stock market;

(c) To define the ownership structure of multinational corporations and their global strategies aimed at market concentration at national, regional and international levels;

(d) To examine the legality of mergers between transnational corporations and banks to form monopolies with unlimited powers, which obstruct technology transfers;

(e) To regulate the abusive use of financial mechanisms (World Bank, IMF, UNDP and other international development aid bodies) serving the interests of parent companies and their subsidiaries;

(f) To assess the interference of transnational corporations in the political life of States, through the corruption and bribery of governments, parliamentarians and the military;

(g) To determine the responsibilities of transnational corporations with respect to environmental pollution, the destruction of nature and the laundering of drug money;

(h) To compile reliable data on direct foreign investment in developing countries and on the dispossession of resources considered to be strategic for national sovereignty, and to draft a series of recommendations which could serve as a normative basis for a future code of conduct.

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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

THE FIFTIETH ANNIVERSARY OF THE ADOPTION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Written statement submitted by Indian Movement Tupaj Amaru and Indigenous World Association, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 June 1998]

THE RIGHTS OF INDIGENOUS PEOPLES IN THE SPIRIT OF THE UNVERSAL DECLARATION

Background to the Declaration

1. At the threshold of the twenty-first century, the international community as a whole, and minorities and indigenous people in particular, are preparing to celebrate the fiftieth anniversary of the Universal Declaration of Human Rights, which was solemnly proclaimed by the United Nations General Assembly, meeting at the Palais de Chaillot in Paris on 10 December 1948.

2. The commemoration of that historical date requires us to take a lucid and objective look at how human rights have developed in time and place. It encourages us to examine our own behaviour where respect for others is concerned honestly and critically. It is our opportunity to ask the collective conscience of the world to assess the record of the Declaration in the last 50 years.

3. Despite the many criticisms that have been levelled at the Universal Declaration, from different circles, for its often selective implementation, inconsistent interpretation and legal weakness, this unprecedented legal and standard-setting instrument embodies man's highest aspirations, is a source of inspiration for everyone fighting for the right to life and dignity and provides the principal legal foundation for respect for all the rights to which all peoples are entitled.

4. Because of its moral force, political vitality and legal scope, the Declaration has been acclaimed in all corners of the world and at all levels of society, by vanquished and colonized peoples, workers on strike, persecuted trade unionists, imprisoned freedom fighters, excluded minorities and aboriginal populations subjected to racial discrimination and genocide.

5. The father of the Declaration, Professor René Cassin of France, accurately summarized its historical significance, moral value and legal scope when he wrote, "It has a very great moral value, it is a beacon for people's hopes and a platform for action by civic associations" (Défense Nationale, vol. 45, January 1989, p. 74). Professor Cassin was also thinking of this symbol of what the international community understands "human rights" to mean when he strongly emphasized the right of every person to rebel, to resist, to fight oppression and tyranny, neocolonialism and xenophobia, in order to preserve the rights and freedoms under threat by the blind forces of the market economy.

6. On this occasion, we must bear in mind that all the declarations ever proclaimed on the meaning of human existence go far back in history, to ancient times, if not primitive societies, back to that crucial moment when man stood apart from the animal world and became a thinking being capable of reason.

7. All human beings are born free and equal in dignity and rights; no one need become so. As fate would have it, however, at a historically determined phase in the development of our ancient civilizations, the concept of private

property arose, legitimized by "natural" law: ownership of the work tools created by man's ingenuity and of the plot of land which he cultivated and hunted on according to his needs.

8. With private property, the violation of rights and freedoms was born. Primitive societies, based on collective labour and the equitable division of wealth, collapsed under a system characterized by a division of classes in constant mutual struggle: slaves and slaveowners, serfs and fuedal lords, workers and capitalists. From that fatal instant until today, man has been "a danger, in perpetual danger".

9. Yet it took the conflagration of two world wars, which claimed the lives of generations, inflicted suffering, terror and death on all of humankind and reduced to ashes the right to life, for the international community to admit its mistakes and take steps to ensure that peoples would never again sink into barbarity.

10. The tragedy of the Second World War goes a long way towards explaining why the international community, especially the victorious States, was convinced of the urgent political need to draw up a human rights charter which would "save succeeding generations from the scourge of war" (Charter of the United Nations, first preambular paragraph).

11. In that historical context, the 1948 Universal Declaration of Human Rights symbolizes the victory of the human being, human freedom and human dignity over Nazi totalitarianism, over an ideology based on racial segregation and total disregard for the right to life.

12. This universal legal instrument did not happen by chance, but was the result of a lengthy and dogged struggle by oppressed and colonized peoples. It was no accident that the framers of the Declaration based their analysis on and took their inspiration from the Declaration of the Rights of Man and of Citizens of 1789, the Declaration on Rights and Duties of States, proclaimed between 1916 and 1922 by the American Institute of International Law, and the Atlantic Charter, signed in August 1941 by the President of the United States and the British Prime Minister.

Universal concept

13. In an irony of history, the 1948 Universal Declaration was neither a treaty nor a convention, but simply a "common standard of achievement for all peoples and all nations" (last preambular paragraph). According to a liberal interpretation, the proclamation of a symbolic text with the loftiest and most distant vision entails nothing more than a moral obligation for the States drafting it.

14. Fifty years after the proclamation of that universal instrument, which placed the individual and his personality at a high level nationally and internationally, the concept of the universality, indivisibility and interdepence of human rights is being subjectively interpretated and selectively implemented, increasingly challenged by some, while defended by others.

15. For critics of the universal concept, the Declaration proclaimed 50 years ago is a moral instrument which lacks the legal force of a convention or multilateral treaty. As this argument goes, the 1948 Declaration is only a resolution, with no binding legal value for the Member States of the United Nations family (Revue des sciences morales et politiques, vol. 144, 1984, p. 384).

16. For the proponents of the principles of universality, indivisibility and interdependence, as reaffirmed by the World Conference on Human Rights, the 1948 Declaration is universal in both content and legal value because it is directly derived from the noble ideal stipulated in the Charter of the United Nations and enshrined in all the international instruments.

Scope

17. The 1948 Universal Declaration (30 articles, adopted by 48 votes to none, with 8 abstentions), which was arrived at through political and diplomatic compromise, was compared by Professor Cassin to an immense temple portico held up by four columns of equal importance.

> The first column is that of personal rights and freedoms (arts. 3-11): life, liberty and security of person, equal protection of the law, guarantees against slavery, torture and arbitrary arrests and punishment.
>
> The second column represents the rights of the individual in his relations with the society of which he is a member (arts. 12-17).
>
> The third column is that of thinking processes, civil liberties and basic political rights (arts. 18-22).
>
> The fourth column is that of economic, social and cultural rights (arts. 22-27).
>
> The last articles, 28 to 30, establish a direct relationship between the national and international spheres, i.e. a connecting wall between the individual and society (see Académie de droit international, Recueil des cours, 1951, vol. II, p. 278).

18. Whatever the controversy surrounding the concept of universality, whether a moral force or a legal force giving rise to an obligation, we have found that there is a double standard where the implementation of a so-called universal instrument is concerned.

19. A half-century of experience has shown us how much its provisions are applied in a selective, discriminatory and unfair manner towards third world peoples, particularly nations struggling for their right to self-determination, and aboriginal minorities and populations throughout the world, who are today more than ever being deprived of their fundamental rights, despoilt of their land, subjected to racism and racial discrimination and doomed to extreme poverty and rural exodus. The Declaration's framers took no interest in the situation of indigenous peoples, who are excluded from the community of nations.

20. The Declaration would not be universal if it did not apply, on the basis of the principle of equity and equality, to all members of the family of man and it would have no meaning if its provisions did not extend to all peoples without restriction or discrimination.

21. Fifty years after the adoption of the Universal Declaration of Human Rights, the record is disappointing: too many serious violations of fundamental rights are being committed with complete impunity against too many people, especially indigenous peoples, who are the most disadvantaged and the target of the most discrimination in too many countries. Such violations are increasingly cloaked in reasons of State, the so-called threat to national sovereignty or interference in internal affairs.

22. Can we conceivably accept the following interpretation: human rights violations are a "domestic" matter; we cannot interfere in the internal affairs of States; each State is free to violate individual and community rights and freedoms up to the point where those violations become a threat to international peace and security? Such a deliberately selective interpretation is based on cynism, selfishness, political hypocrisy and, especially, the strategic interests of the major Western Powers.

23. In a unipolar world, the United States of America, aware that it is the only economic and military Power on Earth, imposes on the peoples of the third world its particular vision of democracy, its model of development and its conception of human rights as absolute and universal world values. American hegemony is reflected in the world Power's total domination in the following six fields: economic, political, military, technological, audio-visual and human rights. Convinced that it has a mission to fulfil on the world scene, America subjugates the world as no empire has ever done in the history of mankind.

24. The temptation is strong for the United States to marginalize the United Nations, act in the place of the Security Council and ignore the role of the International Court of Justice in the peaceful settlement of regional and international disputes.

25. Each year the administration in Washington is forced to devise a sort of human rights diplomacy that will enable it, as necessary, to justify itself and its selective and discriminatory policy against Blacks, Indians, the Latino community, etc. or to denounce, accuse or single out Governments it suspects of human rights violations and even terrorism. The defendant's bench in the Commission on Human rights is often occupied by developing countries which do not conform to American dictates.

26. The human rights issue in North-South relations is being misused by the Western Powers, beginning with the United States, either as a political and diplomatic weapon or as a means of economic and ideological coercion designed to subvert or destabilize a sovereign State by means of economic blackmail (embargos, blockades) and political pressure that does not stop short of military intimidation in an effort to condemn the regimes it feels are a threat to its "vital interests".

27. And so 50 years after the Universal Declaration was solemnly proclaimed, the marble portico is turning into a magnificent facade behind which piles of resolutions lie sleeping in archives; little by little, the door closes, barring entry to the temple of human rights for the disadvantaged and the excluded. The Declaration cannot be universal if this temple of frosted glass, concrete and cold marble does not open its doors to all peoples without distinction or discrimination, especially to the marginalized minorities and aboriginal nations of the so-called universal community and to the victims of gross and systematic violations of their fundamental rights.

28. Viewed in the context of the new international economic order based on neoliberal conventional wisdom - the driving force behind the globalization of the economy - this historical instrument of moral stature has not stood the test of time, but has been left behind by the economic and political events which have taken place throughout the world. Its provisions are no longer equal to the challenge of the law of market forces.

29. At a time when the awakening of a chauvinistic and primitive nationalism with racist connotations is tearing the world apart, perpetrating individual and collective genocide and becoming an increasing threat to peace, the establishment of an international human rights court or a criminal court to try cases involving serious violations of fundamental rights and freedoms is an urgent necessity.

30. When economic and military Powers use international law ruthlessly to sacrifice scapegoats on the altar of a new world order, a system-wide democratization of the United Nations is more necessary than ever; it should begin with the elimination of the veto enjoyed by the permanent members of the Security Council, the body primarily responsible for the maintenance of international peace and security.

31. The celebration of the fiftieth anniversary of the Universal Declaration of Human Rights offers an ideal opportunity for the international community to conduct a thorough review - a requirement in this day and age - of all its provisions to adapt them to economic and political changes, i.e. to bring them into step with history if the serious challenges of the third millennium are to be effectively met.

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